

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
OF THE UNITED STATES OF AMERICA

In the Matter of

) FCC No. 96-93

)
) Federal-State Joint Board on
) Universal Service
)

) Common Carrier Docket No. 96-45

DOCKET FILE COPY ORIGINAL

DOCKET FILE COPY ORIGINAL
OPENING COMMENTS ON UNIVERSAL TELECOMMUNICATIONS SERVICE IN
LOW-INCOME, MINORITY, AND LIMITED-ENGLISH-SPEAKING COMMUNITIES

APR 12 1996

PUBLIC ADVOCATES, INC.
MARK SAVAGE
STEFAN ROSENZWEIG
CARMELA CASTELLANO
1535 Mission Street
San Francisco, California 94103
(415) 431-7430
(415) 431-1048 (fax)

Attorneys for
NATIONAL COUNCIL OF LA RAZA
SOUTHERN CHRISTIAN LEADERSHIP
CONFERENCE
KOREAN YOUTH AND COMMUNITY
CENTER
FILIPINO CIVIL RIGHTS ADVOCATES
FILIPINOS FOR AFFIRMATIVE ACTION
ASSOCIATION OF MEXICAN-AMERICAN
EDUCATORS
CALIFORNIA ASSOCIATION FOR ASIAN-
PACIFIC BILINGUAL EDUCATION
CHICANO FEDERATION OF SAN DIEGO
COUNTY
EL PROYECTO DEL BARRIO
ESCUELA DE LA RAZA UNIDA
LAWYERS' COMMITTEE FOR CIVIL
RIGHTS OF THE SAN FRANCISCO BAY
AREA

TABLE OF CONTENTS

Table of Contents	ii
Index of Exhibits	iii
Summary of Filing	iv
Introduction	1
I. CALIFORNIA'S DEMOGRAPHICS DEMONSTRATE THE IMPORTANCE OF ENSURING UNIVERSAL TELECOMMUNICATIONS SERVICE FULLY AND EQUALLY FOR LOW-INCOME, MINORITY, AND LIMITED-ENGLISH-SPEAKING COMMUNITIES	5
II. IN THE SHIFT FROM MONOPOLY TO LOCAL COMPETITION, THE EVIDENCE IN CALIFORNIA SHOWS GRAVE RISKS FOR LOW-INCOME, MINORITY, AND LIMITED-ENGLISH-SPEAKING COMMUNITIES WITHOUT REGULATORY LEADERSHIP TO PREVENT TELECOMMUNICATIONS REDLINING	7
III. CALIFORNIA'S LEGISLATURE AND GOVERNOR HAVE ESTABLISHED SOUND POLICIES TO PROTECT AND ADVANCE UNIVERSAL SERVICE IN CALIFORNIA	9
IV. FULL AND EQUAL ACCESS TO THE INFORMATION SUPERHIGHWAY IN LOW-INCOME, MINORITY AND LIMITED-ENGLISH-SPEAKING COMMUNITIES	10
A. Equal Access to Enhanced Services is Essential to Low-Income, Minority and Limited-English-Speaking Communities	13
B. "Market" Forces Will Not Ensure the Necessary Access	15
C. An Effective Way To Improve Access in Low-Income, Minority, and Limited-English-Speaking Communities Would Be To Ensure Access to Advanced Services at Affordable Rates for Community-Based Organizations Serving Them	17
V. SCHOOLS, LIBRARIES, AND HEALTH CARE PROVIDERS	18
Conclusion	21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

INDEX OF EXHIBITSS

Declaration of Thomas J. Hargadon (Oct. 4, 1995) Exhibit 1

Declaration of Bong Hwan Kim (Sept. 1, 1995) Exhibit 2

Survey of Low-Income, Minority and Limited-English-Speaking
Communities' Need for Equal Access to the Information Superhighway Exhibit 3

"A New Gulf in American Education, the Digital Divide",
New York Times, Jan. 29, 1996, at C3 Exhibit 4

"'High-Tech Barn-Raising' Shows Disparity of Schools",
Los Angeles Times, Mar. 6, 1996, at A1 Exhibit 5

SUMMARY OF FILING

In many respects, California's experience with universal service and local competition may well presage the nation's experience under the Telecommunications Act of 1996. In 1994, California's legislature enacted three statutes on local competition (AB 3606), universal service (AB 3643), and long-distance competition (AB 3720). California's legislature reviewed and balanced California's particular economic and social needs, and established policies to guide the California Public Utilities Commission's efforts to protect and advance universal service. The Public Utilities Commission has been holding hearings and developing an evidentiary and rulemaking record since December, 1994, to determine how best to implement these policies to protect and advance universal service. We have been parties in these proceedings, vigorously advocating for full and equal access to basic and advanced telecommunications services in California's low-income, minority, and limited-English-speaking communities.

California's legislature stated that essential telecommunications services should be provided at affordable prices to all Californians regardless of linguistic, cultural, ethnic, physical, geographic, or income considerations. It clearly stated that advanced telecommunications services shall be made available as ubiquitously and economically as possible to California's citizens, institutions, and businesses; and because of their extraordinary economic and social impact upon California, education, health care, community, and government institutions must be positioned to be early recipients of the benefits of the information age. Thus, California's legislature reviewed the critical role that community-based organizations and government institutions play in California, and added them to the education and health care organizations also emphasized by the Telecommunications Act of 1996.

Based upon California's particular circumstances, the California Public Utilities Commission has established a universal service goal of 95 percent service (the statewide

1 average) particularly in California's low-income, its minority communities, and its limited-
2 English-speaking communities. In 1994, the CPUC required its key monopoly carriers, Pacific
3 Bell and GTE California, to develop one-year, two-year, and five-year marketing plans, based
4 upon their respective strengths, with detailed targets towards achieving these necessary
5 universal service goals. Because more than 7 million Californians over the age of 18 depend
6 upon or prefer to speak languages other than English, the CPUC requires carriers to inform
7 customers of the availability, terms, and statewide rates for universal lifeline service and basic
8 service in the language in which they initially order service, and to provide bills, notices, and
9 service representatives in those languages. Likewise, based on California's particular
10 experience, the CPUC has specifically prohibited telecommunications redlining, *i.e.*, "an
11 absence of competition in a given community because of a failure to provide marketing and
12 outreach efforts to minority, non-English-speaking communities, and low-income populations".
13 The CPUC is presently considering how best to ensure access to the information superhighway
14 for poor, minority, and limited-English-speaking communities.

15 In the comments which follow, Intervenors share their experience in California with the
16 Federal Communications Commission, in case that experience should prove helpful. Sections
17 253(b) and 254(f) of the Telecommunications Act of 1996 preserve the states' jurisdiction and
18 obligation to protect and advance universal service within each respective state. What policies
19 will best ensure universal service in a particular state will depend in great measure upon that
20 state's unique demographics and demographic trends, the state's particular telecommunication
21 market conduct and history, even the state's particular geography. Intervenors request that
22 nothing in the rules ultimately adopted should undermine the CPUC's carefully tailored efforts
23 to achieve and advance universal service in California. With respect to access for schools,
24 libraries, and health-care providers, Intervenors suggest that the key issue is reversing rather
25 than perpetuating the manifest disparities between such institutions in poor and affluent
26 communities. With respect to ensuring access to advanced telecommunications in all regions

1 of the nation, Intervenors repeat their recommendation to California's Public Utilities
2 Commission, to ensure at a minimum that the community-based organizations serving low-
3 income, minority, and limited-English-speaking communities have full and equal access to the
4 information superhighway.

1 Introduction

2
3 In many respects, California's experience with universal service and local competition
4 may well presage the nation's experience under the Telecommunications Act of 1996. In
5 1994, California's legislature enacted three statutes on local competition (AB 3606), universal
6 service (AB 3643), and long-distance competition (AB 3720). Since then, California's Public
7 Utilities Commission ("CPUC") has held hearings and created an evidentiary and rulemaking
8 record on these issues in five sets of complex, concurrent proceedings. Throughout these
9 proceedings, the National Council of La Raza, Southern Christian Leadership Conference,
10 Korean Youth and Community Center, Filipino Civil Rights Advocates, Filipinos for
11 Affirmative Action, Association of Mexican-American Educators, California Association for
12 Asian-Pacific Bilingual Education, Chicano Federation of San Diego County, El Proyecto del
13 Barrio, Escuela de la Raza Unida, and Lawyers' Committee for Civil Rights of the San
14 Francisco Bay Area ("Intervenors") have vigorously advocated for full and equal access to
15 basic and advanced telecommunications services in California's low-income, minority, and
16 limited-English-speaking communities.

17 In California, the Public Utilities Commission has already identified the importance and
18 gravity of Intervenors' concerns for California's economy, residents, and businesses. In 1994,
19 as California's Legislature and Governor were enacting the statutes, the Public Utilities
20 Commission found before it a record showing that "many low-income, nonwhite, and
21 particularly non-English speaking people who can afford regular telephone service or who are
22 eligible for lifeline phone service do not have telephones".¹ California's *average* penetration
23 rate is approximately 95 percent, but in these communities the record suggested that 20 percent
24 and more had *no* telephone service. The people not reached are the people increasingly central

25
26 ¹ Decision 94-09-065 at 7 (Cal. Pub. Util. Comm'n Sept. 15, 1994).

1 to California's economic and social well-being. Latinos and Asians will account for 77
2 percent of all new households being formed in California between 1990 and 2000, and the
3 figure rises to well over 80 percent with new Black households. This is California's future
4 wage and tax base.² These are the communities and this is the future economic and social
5 base which will be most directly harmed or most affirmatively benefitted by the resolution of
6 universal-service issues in the transformation to local competition.

7 To remedy these gross disparities, the CPUC ordered the two key monopoly telephone
8 carriers in California, Pacific Bell and GTE California, to "significantly improve their customer
9 outreach and educational programs to achieve a 95% penetration rate [the statewide average]
10 for phone service among nonwhite and non-English speaking households."³ In sum, the
11 CPUC ordered the monopoly carriers to ensure universal service *equally* for all segments of
12 California's public, and thus 95 percent for California's Latino, African-American, Asian, and
13 low-income households in California, too.

14 When California enacted the three statutes on local competition and universal service,
15 the CPUC began the complex proceedings to implement the transformation. In response to the
16 record and argument Intervenors have presented in these new proceedings, the CPUC has
17 required *all* competing carriers to contribute to its universal-service goal of 95-percent
18 telephone service (the statewide average) in California's low-income, minority, and limited-
19 English-speaking communities.⁴ It has specifically prohibited telecommunications redlining
20 and ordered limited multi-lingual services.⁵ It has deferred until August, 1996, a decision on
21
22

23 ² Id. at 272.

24 ³ Id. at 272.

25 ⁴ Decision 95-07-050 at 13-14 (Cal. Pub. Util. Comm'n July 19, 1995).

26 ⁵ Decision 95-12-056 at 84-85 (Cal. Pub. Util. Comm'n Dec. 20, 1995).

1 Intervenor's recommendation to provide the community-based organizations serving these
2 communities with full and equal access to advanced services at lifeline rates.

3 Sections 253(b) and 254(f) preserve the states' jurisdiction and obligation to protect and
4 advance universal service within each respective state. What policies will best ensure universal
5 service in a particular state will depend in great measure upon that state's unique demographics
6 and demographic trends, the state's particular telecommunication market conduct and history,
7 even the state's particular geography.

8 California's legislature, having reviewed and balanced California's particular economic
9 and social needs, established specific policies to guide the CPUC's efforts to protect and
10 advance universal service. The legislature stated that "[e]ssential telecommunications services
11 should be provided at affordable prices to all Californians regardless of linguistic, cultural,
12 ethnic, physical, geographic, or income considerations."⁶ It clearly stated The Legislature
13 clearly stated that advanced telecommunications services shall be made available as
14 ubiquitously and economically as possible to California's citizens, institutions, and businesses;⁷
15 and because of their extraordinary economic and social impact upon California, education,
16 health care, community, and government institutions must be positioned to be early recipients
17 of the benefits of the information age.⁸ California's legislature reviewed the critical role that
18 community-based organizations and government institutions play in California, and added them
19 to the education and health care organizations also emphasized by the Telecommunications Act
20 of 1996. The CPUC is presently considering how best to ensure access to the information
21 superhighway consistent with these policies and California's circumstances.

22
23 •

24 ⁶ Act of July 21, 1994, ch. 278, § 2(b).

25 ⁷ Id. § 1(d)(2); Cal. Pub. Util. Code § 709(b).

26 ⁸ Act of July 21, 1994, ch. 278, § 2(b)(6).

1 Based upon California's particular circumstances, the California Public Utilities
2 Commission has established a universal service goal of 95 percent service (the statewide
3 average) particularly in California's low-income, its minority communities, and its limited-
4 English-speaking communities. In 1994, the CPUC required its two large local exchange
5 carriers to develop one-year, two-year, and five-year marketing plans, based upon their
6 respective strengths, with detailed targets towards achieving these necessary universal service
7 goals. Because more than 7 million Californians over the age of 18 depend upon or prefer to
8 speak languages other than English, the CPUC requires carriers to inform customers of the
9 availability, terms, and statewide rates for universal lifeline service and basic service in the
10 language in which they initially order service, and to provide bills, notices, and service
11 representatives in those languages. Likewise, based on California's particular experience, the
12 CPUC has specifically prohibited telecommunications redlining, *i.e.*, "an absence of
13 competition in a given community because of a failure to provide marketing and outreach
14 efforts to minority, non-English-speaking communities, and low-income populations".

15 Each of the policies and efforts above is fundamentally important to genuine universal
16 service for California and Californians. In the comments which follow, Intervenors share their
17 experience in California with the Federal Communications Commission, and request that
18 nothing in the rules ultimately adopted should undermine these carefully tailored efforts to
19 achieve and advance universal service in California. With respect to access for schools,
20 libraries, and health-care providers, Intervenors suggest that the key issue is reversing rather
21 than perpetuating the manifest disparities between such institutions in poor and affluent
22 communities. With respect to ensuring access to advanced telecommunications in all regions
23 of the nation, Intervenors repeat their recommendation to California's Public Utilities
24 Commission, to ensure at a minimum that the community-based organizations serving low-
25 income, minority, and limited-English-speaking communities have full and equal access to the
26 information superhighway.

1 **I. CALIFORNIA'S DEMOGRAPHICS DEMONSTRATE THE IMPORTANCE OF**
2 **ENSURING UNIVERSAL TELECOMMUNICATIONS SERVICE FULLY AND**
3 **EQUALLY FOR LOW-INCOME, MINORITY, AND LIMITED-ENGLISH-**
4 **SPEAKING COMMUNITIES.**

5 When California's Public Utilities Commission ordered Pacific Bell and GTE California
6 to improve considerably their efforts in low-income, minority, and limited-English-speaking
7 communities, it noted that these communities comprise nearly one half of California's
8 population and California's future wage and tax base. It reviewed internal utility data on
9 California's demographic trends (and to some extent the nation's future demographic trends):

- 10 ▶ Hispanics and Asians will account for 77 percent of all new households formed in
11 California between 1990 and 2000.
- 12 ▶ In the 1990s, the Hispanic population in California will increase 8 times faster
13 than non-Hispanic whites and will account for 52 percent of the state's total
14 growth. The Asian population will increase ten times faster than non-Hispanic
15 whites and will account for approximately 24 percent of the state's growth. By
16 the year 2000, Hispanics and Asians alone will account for more than 50 percent,
17 or over 15,000,000 people, of the state's population.
- 18 ▶ Approximately 67 percent of all Hispanics in California depend upon speaking or
19 prefer to speak primarily in Spanish.
- 20 ▶ Within the United States, 86 percent of all Hispanics speak Spanish at home, 71
21 percent speak Spanish in social situations, and 49 percent speak Spanish at work.
- 22 ▶ Over one half of all Asians in California depend upon speaking or prefer to speak
23 primarily in their native language.⁹

24
25 ⁹ Decision 94-09-065 at 272-73, In re Alternative Regulatory Frameworks for Local
26 Exchange Carriers, File No. I.87-11-033 (Sept. 15, 1994) (quoting Pacific Bell's Response to
Intervenors' Request for Admission of Facts (Mar. 3, 1992) (Exhibit 631 in evidence)).

1 The Telecommunications Act of 1996 takes a critical step in recognizing the needs of
2 low-income communities, including provisions on the "affordability" of all telecommunications
3 services--basic and advanced--to low-income individuals. As the graph on the next page
4 illustrates, however, income alone is an insufficient criteria by which to assess universal
5 service. The graph indicates that at all income levels, minority communities have nearly twice
6 as many households without telephone service. A study jointly sponsored by Pacific Bell and
7 GTE California and conducted by Mervin Field found that in areas of low penetration of
8 telephone service (less than 90 percent), the population is 76 percent minority.¹⁰ Intervenors
9 recommend that the Federal Communications Commission address these differences by
10 ethnicity as it develops its universal service rules.

11 California has approximately seven million individuals who speak languages other than
12 English at home. The study of Pacific Bell's and GTE's customers in 1993 found that many
13 minority customers rely more on their native language than on English. For example, 62
14 percent of Hispanic customers, 66 percent of Chinese customers, 87 percent of Korean
15 customers and 90 percent of Vietnamese customers rely on their native languages rather than
16 on English.¹¹ Eighty-three percent of *non*-customers met the ULTS guidelines,¹² but half of
17 language dependent customers had never heard of ULTS.¹³ Among current Pacific Bell
18 customers, who presumably were informed of ULTS service pursuant to the CPUC's
19 regulations, 50 percent of Spanish-speaking customers, 40 percent of Chinese-speaking
20 customers, 41 percent of Vietnamese-speaking customers and 65 percent of Korean-speaking
21

22 ¹⁰ Field Research Corporation, Affordability of Telephone Service, vol. 1, table 1.1
23 (1993).

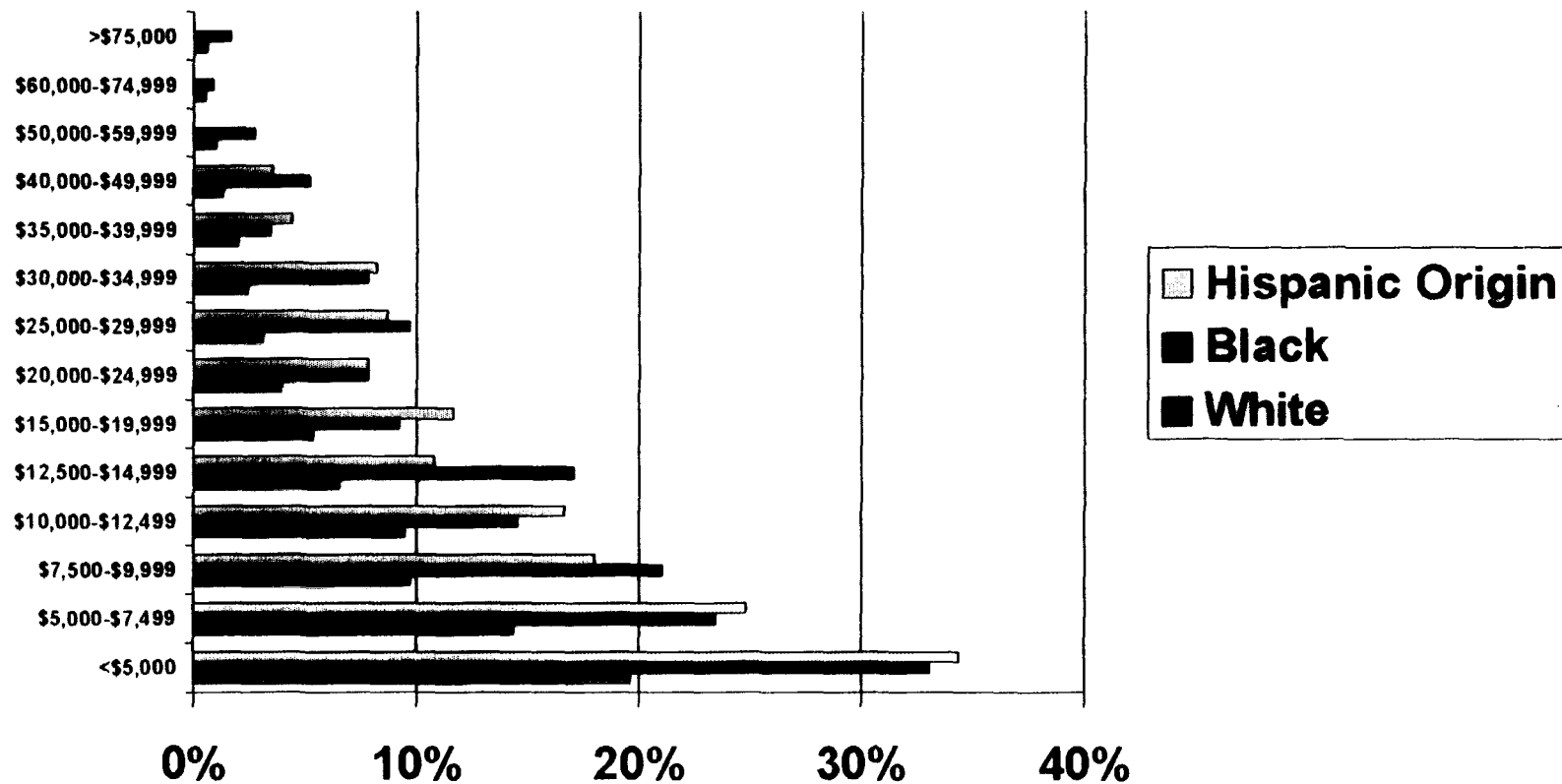
24 ¹¹ Id., vol. 2, at 6.

25 ¹² Id., vol. 1, at s-6.

26 ¹³ Id. table 7.1.

Households without Phones: Racial Disparity

At each income level, Latino and Black households are approximately twice as likely to have no telephone service.



Percentage of Households without Telephone Service

Source: FCC Subscribership
Data, March 1994.

1 customers reported *not* being aware of Lifeline service.¹⁴ Thus, in California, effective,
2 bilingual information is essential for ensuring that millions of Californians have access to basic
3 and advanced telecommunications services. Lack of such information is clearly a barrier to
4 service. The graph on the next page makes this point clearly.

5
6 **II. IN THE SHIFT FROM MONOPOLY TO LOCAL COMPETITION, THE**
7 **EVIDENCE IN CALIFORNIA SHOWS GRAVE RISKS FOR LOW-INCOME,**
8 **MINORITY, AND LIMITED-ENGLISH-SPEAKING COMMUNITIES WITHOUT**
9 **REGULATORY LEADERSHIP TO PREVENT TELECOMMUNICATIONS**
10 **REDLINING.**

11 In California, we conducted targeted discovery and presented evidence to the CPUC that
12 telecommunications redlining would likely occur during and after the transition to local
13 competition without the CPUC's leadership. We served discovery requests upon key players in
14 the future of local competition within California--AT&T, MCI, Sprint Telecommunications
15 Venture, Teleport, Metropolitan Fiber Systems, Pacific Bell, GTE California--asking them for
16 all documents on plans to serve California's low-income, minority, and limited-English-
17 speaking residents.

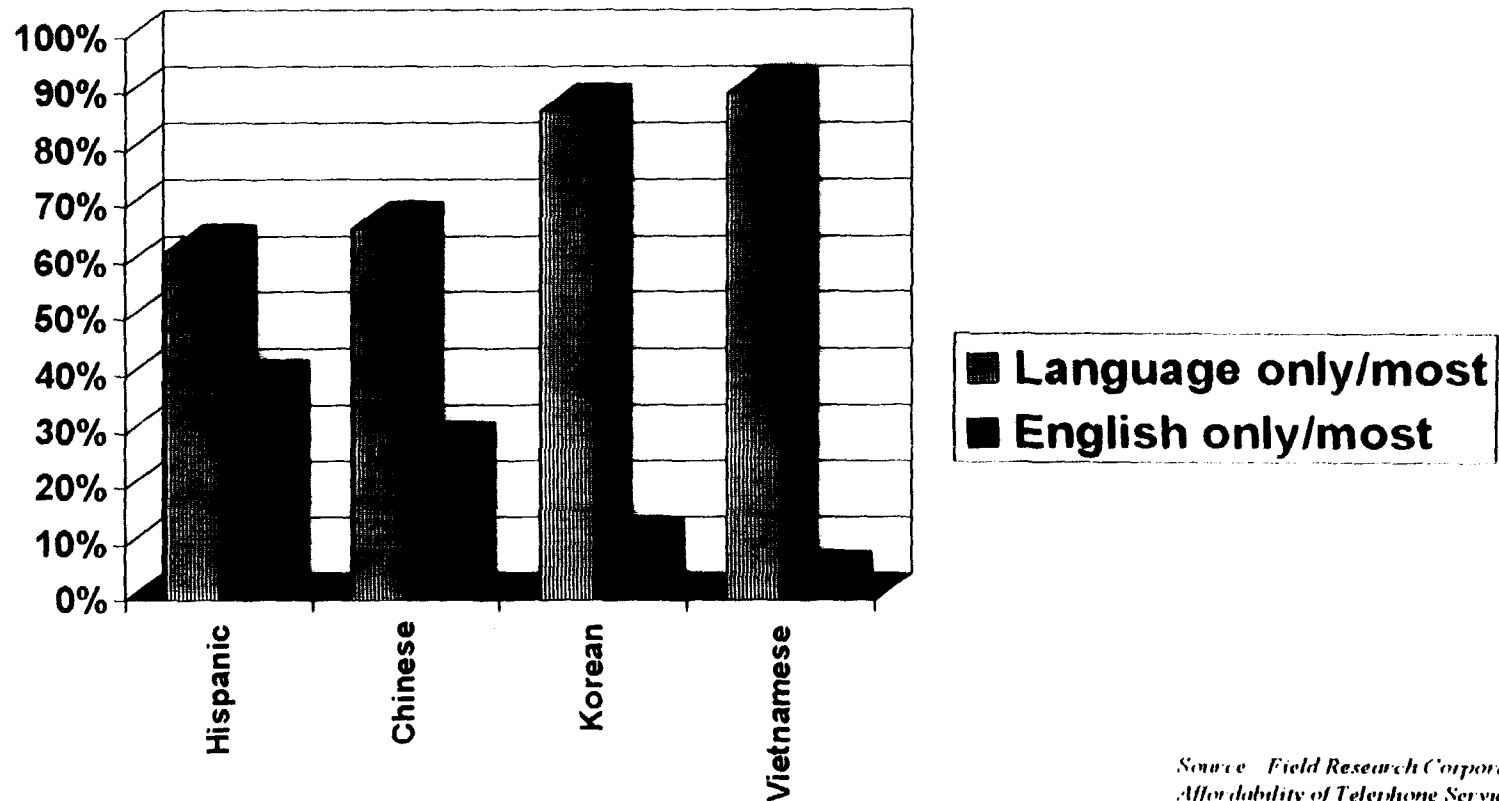
18 The results were predictable and astonishing. When forced to respond, the leading
19 future competitors had little or no documents of plans to provide basic, enhanced, or
20 broadband services to minority, low-income, inner-city and limited-English speaking customers
21 during the first five years of competition in California:

- 22 • None had any documents or memoranda of internal discussions about any benefit
23 that their entry into local competition might bring California's minority,
24 low-income, and limited-English-speaking communities.
- 25 • Five of seven (5/7) had no documents or memoranda of internal discussions about
26 the income, race, or languages spoken of those to whom they intended to provide
local exchange services during the next five years of local competition.

¹⁴ Decision 94-09-065 at 274.

The Need for Multi-lingual Services in California:

Percentage Who Speak Native Language Only or Most



Source: Field Research Corporation,
Affordability of Telephone Service,
volume 2, table 15.

- 1 • Six of seven (6/7) had no documents or memoranda of internal discussions on the
2 provision of broadband capacity to low-income, minority, and
3 limited-English-speaking communities during the first five years of local
4 competition.
- 5 • Six of seven (6/7) had no documents or memoranda of internal discussions on the
6 provision of enhanced services to low-income, minority, and
7 limited-English-speaking communities during the first five years of local
8 competition.
- 9 • Five of seven (5/7) had no documents or memoranda of internal discussions on
10 providing bilingual customer service in the course of local competition.
- 11 • None would commit to a five-year plan to provide enhanced telecommunications
12 services to low-income, minority, and limited-English-speaking households, or to
13 community-based organizations serving these communities.
- 14 • None would provide ISDN at lower prices for low-income residents.

15 Instead, they are targeting affluent residential and big business customers. The implications
16 are devastating for the future of essential, equal access to basic and advanced
17 telecommunication services. The result can only be an even wider gap between the
18 information rich and poor.

19 Given the evidence, the CPUC included an explicit prohibition of telecommunications
20 redlining, *i.e.*, "an absence of competition in a given community because of a failure to
21 provide marketing and outreach efforts to minorities, non-English speaking, and low-income
22 populations".¹⁵ It further stated explicitly its intent to take strong action against any carrier
23 found engaged in redlining.¹⁶ Earlier, it applied to *all* competing carriers California's
24 universal service goal of 95 percent subscription--the statewide average--in low-income,
25 minority, and limited-English-speaking communities.¹⁷ To protect low-income Californians,
26 the CPUC ordered all carriers to continue to provide basic telephone service to them at \$5.62
monthly for flat-rate service and \$3.00 monthly for measured-rate service, and installation at

24 ¹⁵ Decision 95-12-056 at 81.

25 ¹⁶ *Id.* at 84-85, 91 ¶¶ 57-59, 95 ¶ 32, app. C at 12.

26 ¹⁷ Decision 95-07-050 at 13-14.

1 no more than \$10.00.¹⁸ Lastly, the CPUC amended its rules for local competition to require
2 all competing carriers to inform each new customer, in writing and in the language in which
3 the sale was made, of the availability, terms, and statewide rates of lifeline service and basic
4 service, as well as bills, notices, and access to bilingual customer service representatives in
5 these languages.¹⁹

6
7 **III. CALIFORNIA'S LEGISLATURE AND GOVERNOR HAVE ESTABLISHED**
8 **SOUND POLICIES TO PROTECT AND ADVANCE UNIVERSAL SERVICE IN**
9 **CALIFORNIA.**

10 California's legislature developed in 1994 the policies to govern universal service in the
11 transformation from monopoly to local competition. It found and declared that "[u]niversal
12 service must be defined in a way that ensures that all segments of California society have
13 access to the technology that will allow them to enjoy the benefits of the information age and
14 the information superhighway."²⁰ It required that "[e]ssential telecommunications services
15 should be provided at affordable prices to all Californians regardless of linguistic, cultural,
16 ethnic, physical, geographic, or income considerations."²¹ Thus, California's
17 telecommunications policies target language barriers to universal service in addition to the
18 other barriers identified in the Telecommunications Act of 1996.

19 The legislature clearly stated that advanced telecommunications services shall be made
20 available as ubiquitously and economically as possible to California's citizens, institutions, and
21

22
23 ¹⁸ Decision 95-12-056, app. C, at 18.

24 ¹⁹ Decision 95-12-056 at 80, 91 ¶¶ 55-56, 95 ¶¶ 30-31, 103 ¶¶ 63-64, app. C at 12.

25 ²⁰ Act of July 21, 1994, ch. 278, § 1(c).

26 ²¹ Id. § 2(b).

1 businesses;²² and because of their extraordinary economic and social impact upon California,
2 education, health care, community, and government institutions must be positioned to be early
3 recipients of the benefits of the information age.²³ California's legislature reviewed the
4 critical role that community-based organizations and government institutions play in California,
5 and added them to the education and health care organizations emphasized by the
6 Telecommunications Act of 1996. The CPUC is presently considering how best to ensure that
7 community-based organizations have full and equal access to the information superhighway
8 consistent with these policies and California's circumstances.

9
10 **IV. FULL AND EQUAL ACCESS TO THE INFORMATION SUPERHIGHWAY IN**
11 **LOW-INCOME, MINORITY AND LIMITED-ENGLISH-SPEAKING**
12 **COMMUNITIES.**

13 A nation whose economic and social life already relies so heavily on information cannot
14 afford a citizenry divided by unequal access to information. Inequitable access widens the
15 social, political, and economic disparity between the wealthy and poor, between the various
16 ethnic groups, between those Americans who speak English and those who do not. The
17 importance and magnitude of this issue cannot be underestimated. With access to information
18 being the key to economic opportunity and political representation, many are viewing
19 discriminatory access to the information superhighway as the civil rights issue and the
20 economic rights issue of the 21st century.

21 California's legislature declared that "[u]niversal service must be defined in a way that
22 ensures all segments of California society have access to the technology that will allow them to
23
24

25 ²² Id. § 1(d)(2); Cal. Pub. Util. Code § 709(b).

26 ²³ Act of July 21, 1994, ch. 278, § 2(b)(6).

1 enjoy the benefits of the information age and the information superhighway."²⁴ Yet six of
2 seven of the key competitors in California had no documents, or memoranda of internal
3 discussions, concerning plans to include full and equal access to the information superhighway
4 in California's low-income, minority, and limited-English-speaking communities. To
5 California's Public Utilities Commission, we have recommended that it should adopt rules
6 requiring carriers to develop and file marketing plans for advanced telecommunications
7 technologies and services in these communities, and lifeline rates at least for the community-
8 based organizations, education programs, and health clinics centrally serving these
9 communities.

10 Mr. Thomas J. Hargadon has twenty years of experience observing and analyzing
11 telecommunications markets and how they respond to change, and teaching advanced topics in
12 telecommunications to graduate students. He consults on these matters for both Fortune 100
13 corporations and international clients.²⁵ "In my opinion," he concluded in a declaration for
14 the CPUC, "having observed and analyzed telecommunications markets for many years, the
15 [California Public Utilities] Commission must ask itself how the competitive market will
16 function in California before it decides what degree of regulation that market will require." He
17 described his experience that there will be keen competition for high-volume, high-revenue
18 business customers. California's poor, minority, and limited-English-speaking communities
19 will remain marginal at best. "As I describe below, the Commission should not leave it to
20 'free market competition' to sort out the winners and losers, the haves and the have nots,
21 because the have nots will continue not to have access."²⁶

24 Id. § 1(g).

25 ²⁵ Declaration of Thomas J. Hargadon ¶¶ 2-4 (Oct. 4, 1995) (attached as Exhibit 1).

26 ²⁶ Id. ¶¶ 7-18.

1 Mr. Hargadon testified that the failure of the CPUC to offer guidance on prohibiting
2 redlining in the area of enhanced services would place minorities and the poor at the bottom
3 tier of a two-tiered telecommunications system in California.²⁷ The trend is already
4 developing. Pacific Bell has downgraded the deployment of its proposed Hybrid Fiber Coaxial
5 Cable system in Southern California. Mr. Hargadon suggested that this will mean that
6 substantial numbers of minority communities in Southern California will no longer benefit
7 from access to this advanced technology.²⁸ He noted that the cable companies are focusing
8 their Hybrid Fiber Coaxial Cable system upgrade on the business segments in urban areas, and
9 other large long distance carriers are noncommittal.²⁹

10 Mr. Bong Hwan Kim, Executive Director of the Korean Youth and Community Center
11 in Los Angeles, attested to the real need and demand for access to advanced communication
12 technologies in poor, minority, and limited-English-speaking communities. The applications
13 which KYCC must develop to meet these needs require more than just access to a regular
14 telephone line; what communities need and must obtain are lines with broadband capacity.
15 Without such lines, use of the applications the community needs to access and use the
16 information superhighway are neither practical nor possible.

17 Mr. Kim is also Chair of the Telecommunications Sub-Committee of Asian Pacific
18 Islanders California Action Network (APIsCAN), a statewide coalition of over 40 service and
19 advocacy agencies which is currently laying the groundwork to build a state-wide Asian
20 American information infrastructure. He is also a member of the Steering Committee of the
21 Asian Pacific Network (APNet), which is the only project funded by the National
22 Telecommunications and Information Administration (NTIA) to address the needs and
23

24 ²⁷ Id. ¶ 11.

25 ²⁸ Id. at ¶ 14.

26 ²⁹ Id. ¶¶ 15-16.

1 perspectives of Asian Americans. He has already found this advanced communication
2 technology to be a powerful mechanism to reach isolated low-income, immigrant communities
3 with information on social services, education, arts and culture, and consumer issues. As Mr.
4 Kim testified, "These technologies allow us to expand traditional service models, and thus they
5 challenge us not only to reach more community members, but also to reach them with more
6 depth and substance. Community-based organizations are in the unique position to act as the
7 conduit by which the information superhighway is introduced to these communities."³⁰

8 Discovery responses, however, indicate that redlining of enhanced services will most
9 likely occur in a competitive environment without regulatory leadership. We asked the most
10 prominent future competitors for documents relating to the provision of enhanced and
11 broadband services to minority, low-income, inner-city and limited-English speaking customers
12 during the first five years of competition. Almost all companies had no documents relating to
13 provision of broadband service or enhanced services to these communities.

14
15 **A. EQUAL ACCESS TO ENHANCED SERVICES IS ESSENTIAL TO LOW-INCOME,
16 MINORITY AND LIMITED-ENGLISH-SPEAKING COMMUNITIES.**

17 Low-income and minority communities are the least likely to have access to advanced
18 telecommunication services. Yet those who do have access in these communities are often
19 *more* likely to use these services for access to employment, educational programs, and
20 government services. These are the findings of Falling Through the Net: A Survey of the
21 "Have Nots" in Rural and Urban America, published by the National Telecommunications and
22 Information Administration in July, 1995. The NTIA reports that these communities, when

23
24
25
26 ³⁰ Declaration of Bong Hwan Kim ¶ 11 (Aug. 31, 1995) (attached as Exhibit 2).

1 **B. "MARKET" FORCES WILL NOT ENSURE THE NECESSARY ACCESS.**

2 Access to the information superhighway and advanced telecommunications cannot be left
3 to "market" forces when the carriers artificially limit the market. The community-based
4 organizations' reported need for access, and the dearth of plans and even internal discussion of
5 how to compete for and meet that need, speak for themselves. The major carriers are
6 focussing on affluent, non-minority communities when developing the advanced
7 telecommunications infrastructure. This pattern may be seen in California, where Pacific Bell
8 is reportedly excluding entire low-income and minority communities from advanced
9 telecommunications infrastructure development, while simultaneously serving surrounding
10 regions.³³ Pacific Bell is not alone--the petitioners before the Federal Communications
11 Commission present the case that this myopia pervades the industry.

12 Dr. Mark Cooper examined Pacific Bell's application to the Federal Communications
13 Commission for the construction and operation of video dialtone facilities in Orange County,
14 South San Francisco Bay, and San Diego, as well as applications from carriers in other parts of
15 the country, and found "a clear and systematic pattern of not serving some lower income areas,
16 which turn out to be much more heavily minority areas."³⁴ He found that in virtually all of
17 the video dialtone applications, the areas served have a lower percentage of non-minority
18 residents than the areas not served.³⁵ Pacific Bell responded by asserting that the ethnic
19 breakdown of its 1994-1996 service area closely corresponds to the ethnic breakdown of
20
21
22

23 ³³ Affidavit of Dr. Mark N. Cooper in Support of the Petition for Relief of the Center for
24 Media Education, The Consumer Federation of America, The United Church of Christ, the
National Association for the Advancement of Colored People, and National Council of La
Raza, File No. RM-8491 (Fed. Communications Comm'n May 19, 1994).

25 ³⁴ Id. ¶¶ 20-24.

26 ³⁵ Id. ¶ 18.

1 California.³⁶ Dr. Cooper examined this data in turn and found that it actually proved the
2 point. "Discrimination cannot be measured on such a broad [statewide] scale," he noted,
3 because "such an approach would enable companies to avoid serving center cities, which are
4 significantly minority, and rural areas, which are significantly non-minority, and claim to be
5 representative because the two excluded areas average each other out."³⁷ Additionally, "in the
6 telecommunications/video area, local calling areas, local cable areas, and local governments are
7 much smaller than a statewide average," and therefore "relevant social, economic and
8 governmental areas which should be the frame of reference for video dialtone are small local,
9 not state-wide areas." When he examined those smaller areas, the disparities were present.³⁸

10 In addition to Pacific Bell's selective video dialtone deployment, nationwide examples
11 include Bell Atlantic's complete exclusion of the heavily minority areas of the District of
12 Columbia and Prince George's County, while simultaneously proposing video dialtone service
13 to surrounding areas with higher incomes and lower minority populations,³⁹ and U.S. West's
14 and Ameritech's selection of areas within single counties and cities that have higher income
15 and lower percentages of minorities than the unserved areas.⁴⁰ These examples suggest the
16 broad failure to serve all communities equally that will result if the information superhighway
17 is left to "local competition" without any regulatory leadership.

18 ³⁶ "The ethnic mix of our initial deployment areas closely approximates the state as a
19 whole." Pacific Bell, News Release, September, 1994.

20 ³⁷ Affidavit of Dr. Mark N. Cooper in Support of the Reply Comments of the Center for
21 Media Education, the Consumer Federation of America, the United Church of Christ, the
22 National Association for the Advancement of Colored People, and National Council of La
Raza ¶¶ 3-6, File No. RM-8491 (Fed. Communications Comm'n July 26, 1994).

23 ³⁸ Ibid.

24 ³⁹ Affidavit of Dr. Mark N. Cooper in Support of the Petition for Relief of the Center for
25 Media Education, the Consumer Federation of America, the United Church of Christ, the
National Association for the Advancement of Colored People, and National Council of La
Raza ¶¶ 18-20 (May 19, 1994).

26 ⁴⁰ Ibid.

1 **C. AN EFFECTIVE WAY TO IMPROVE ACCESS IN LOW-INCOME, MINORITY, AND**
2 **LIMITED-ENGLISH-SPEAKING COMMUNITIES WOULD BE TO ENSURE ACCESS**
3 **TO ADVANCED SERVICES AT AFFORDABLE RATES FOR THE COMMUNITY-**
4 **BASED ORGANIZATIONS SERVING THEM.**

5 Section 254(b)(2) directs that access to advanced telecommunications and information
6 services should be provided in all regions of the nation, and Section 254(b)(3) directs special
7 efforts to ensure that low-income communities have the full and equal levels of such access.
8 Paragraph 5 of the Notice of Proposed Rulemaking requests comments upon how to
9 accomplish these goals. An effective approach to improve access to advanced
10 telecommunications in poor, minority, and limited-English-speaking communities would be to
11 ensure such access at affordable rates to the community-based organizations serving them.

12 Currently, access to advanced technologies and services is not generally available
13 publicly in these communities. Of the organizations we surveyed, only 32.6 percent report that
14 Internet access is publicly available on any bandwidth in the community they serve. The
15 Korean Youth and Community Center--not the local schools and libraries--provides the only
16 access to the Internet in its low-income, Asian community. This makes it particularly
17 important that carriers provide advanced services to these organizations at special rates so that
18 wider communities will be guaranteed access.

19 California's Legislature found that "[b]ecause of their economic and social impact,
20 education, health care, community, and government institutions must be petitioned to be early
21 recipients of the information age."⁴¹ The report of the National Telecommunications and
22 Information Administration suggests that until connectivity to households is more widespread,
23 community centers, public schools, and libraries play a pivotal role in providing information
24 access to underserved communities. Mr. Kim of the Korean Youth and Community Center
25 agrees on the importance of having advanced information technologies available in community-
26 based organizations. His organization has found that such technologies provide a powerful

⁴¹ Act of July 21, 1994, ch. 278, § 2(b)(6).

1 mechanism to reach isolated low-income, immigrant communities with information on social
2 services, education, arts and culture, and consumer issues.⁴² Indeed, KYCC is using advanced
3 communication technology to enhance its capacity and efficiency in order to continue or
4 increase its levels of services to the community even as resources decline.⁴³

5 Community-based organizations are carrying the brunt of the load of providing critical
6 services. As they are called upon to serve more of the poor with fewer resources, they need
7 quick and effective access to the information and programs necessary to provide these services.
8 They have urgent needs *now* for full access to the information superhighway. They are also
9 operating at deficits. Their sources of funds are not increasing nearly as rapidly as their
10 expenses to provide even minimal services to the community. Thus, they would need access
11 to these advanced telecommunication services at affordable rates. Surely as non-profit
12 charitable organizations serving the poor, they should qualify for discounted rates.

13 14 **V. SCHOOLS, LIBRARIES, AND HEALTH CARE PROVIDERS**

15
16 Paragraph 79 of the Notice of Proposed Rulemaking cites the statistic that "[s]chools
17 with large proportions of students from poor families are half as likely to provide Internet
18 access as schools with small proportions of such students". Intervenors attach two articles
19 (Exhibits 4 and 5) which detail such disparities, one comparing schools in San Jose, California,
20 the other describing how NetDay '96 failed to reach poor schools in Los Angeles. The
21 National Telecommunications and Information Administration observed similar disparities in
22 libraries and health care organizations.⁴⁴ In developing the policies to implement the

23
24 ⁴² Declaration of Bong Hwan Kim ¶ 11.

25 ⁴³ Id. ¶ 10.

26 ⁴⁴ National Telecommunications and Information Administration, Connecting The Nation: Classrooms, Libraries, and Health Care Organizations in the Information Age (June 1995).